

JS 44C/SDNY  
REV. 12/2005

## CIVIL COVER SHEET

07 CIV 7366  
JUDGE PRESKA

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

## PLAINTIFFS

Michael Hue-Williams Ltd.,  
d/b/a Albion Gallery

## DEFENDANTS

James Turrell

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)  
Peter R. Stern, Esq., McLaughlin &  
Stern, LLP, 260 Madison Ave., NYCATTORNEYS (IF KNOWN) Lisa G. Horwitz, Esq. &  
Gregory A. Clarick, Esq., Manatt, Phelps  
Phillips, LLP, 7 Times Sq., NYC

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

28 U.S.C. §§ 1332, 1441 and 1446, removal based on diversity.

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes ☐ Judge Previously AssignedIf yes, was this case Vol ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date \_\_\_\_\_ & Case No. \_\_\_\_\_

(PLACE AN [x] IN ONE BOX ONLY)

## NATURE OF SUIT

## ACTIONS UNDER STATUTES

## BANKRUPTCY

## OTHER STATUTES

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☐ 195 CONTRACT PRODUCT LIABILITY  
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☐ 315 AIRPLANE PRODUCT LIABILITY  
☐ 320 ASSAULT, LIBEL & SLANDER  
☐ 330 FEDERAL EMPLOYERS' LIABILITY  
☐ 340 MARINE  
☐ 345 MARINE PRODUCT LIABILITY  
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☐ 355 MOTOR VEHICLE PRODUCT LIABILITY  
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## PERSONAL INJURY

- ☐ 362 PERSONAL INJURY - MED MALPRACTICE  
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## FORFEITURE/PENALTY

- ☐ 610 AGRICULTURE  
☐ 620 FOOD & DRUG  
☐ 625 DRUG RELATED SEIZURE OF PROPERTY  
☐ 630 LIQUOR LAWS  
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☐ 650 AIRLINE REGS  
☐ 660 OCCUPATIONAL SAFETY/HEALTH  
☐ 690 OTHER

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- ☐ 710 FAIR LABOR STANDARDS ACT  
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☐ 791 EMPL RET INC SECURITY ACT

## BANKRUPTCY

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## REAL PROPERTY

- ☐ 210 LAND CONDEMNATION  
☐ 220 FORECLOSURE  
☐ 230 RENT LEASE & EJECTMENT  
☐ 240 TORTS TO LAND  
☐ 246 TORT PRODUCT LIABILITY  
☐ 290 ALL OTHER REAL PROPERTY

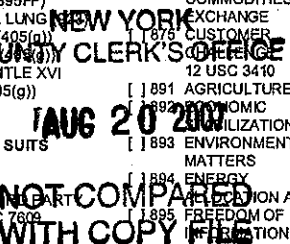
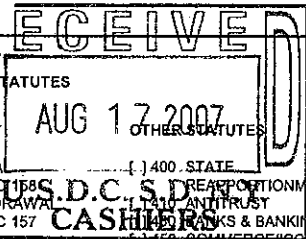
## ACTIONS UNDER STATUTES

## CIVIL RIGHTS

- ☐ 441 VOTING  
☐ 442 EMPLOYMENT  
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- ☐ 510 MOTIONS TO VACATE SENTENCE  
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Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.?  
IF SO, STATE:

DEMAND \$ \_\_\_\_\_ OTHER \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint  
JURY DEMAND: ☐ YES ☒ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(SEE REVERSE)

(PLACE AN x IN ONE BOX ONLY)

## ORIGIN

- ☐ 1 Original Proceeding
 ☒ 2a. Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from (Specify District)
 ☐ 6 Multidistrict Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ 2b. Removed from State Court  
AND at least one party is a pro se litigant

(PLACE AN x IN ONE BOX ONLY)

## BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF
 ☐ 2 U.S. DEFENDANT
 ☐ 3 FEDERAL QUESTION (U.S. NOT A PARTY)
 ☒ 4 DIVERSITY

IF DIVERSITY, INDICATE  
CITIZENSHIP BELOW.  
(28 USC 1332, 1441)

## CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF [ ] 1 [ ] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF <input checked="" type="checkbox"/> 3 [ ] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [ ] 5 [ ] 5
CITIZEN OF ANOTHER STATE	[ ] 2 <input checked="" type="checkbox"/> 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[ ] 4 [ ] 4	FOREIGN NATION	[ ] 6 [ ] 6

## PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Michael Hue-Williams Ltd., d/b/a Albion Gallery  
 8 Hester Road  
 Battersea, London  
 England SW11 4AX

## DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

James Turrell  
 9000 Hutton Ranch Road  
 Flagstaff, Arizona 86004

## DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ FOLEY SQUARE  
(DO NOT check either box if this a PRISONER PETITION.)

DATE 8/17/07 SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT  
[ ] NO

RECEIPT #

☒ YES (DATE ADMITTED Mo. Nov. Yr. 2001)  
Attorney Bar Code #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

J Michael McMahon, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

MANATT, PHELPS & PHILLIPS, LLP

7 Times Square

New York, NY 10036

Gregory A. Clarick

Lisa G. Horwitz

(212) 790-4500

(212) 790-4545 (fax)

Attorneys for defendant James Turrell  
**NOT COMPARED  
WITH COPY FILE**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW YORK

MICHAEL HUE-WILLIAMS LTD. d/b/a  
ALBION GALLERY,

Plaintiff,

v.

JAMES TURRELL,

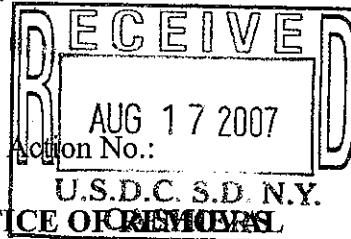
Defendant.

NEW YORK  
COUNTY CLERK'S OFFICE

AUG 20 2007

07 CIV 7366

JUDGE PRESKA



Civil Action No.:

**NOTICE OF REMOVAL  
OF ACTION UNDER  
28 U.S.C. §§ 1332, 1441 AND 1446**

Removed from the Supreme Court of the  
state of New York, County of New  
York, Index No. 07/602411

Defendant James Turrell hereby files this Notice of Removal of the above-entitled action to the United States District Court for the Southern District of New York from the Supreme Court of the State of New York, County of New York, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1332 because there is complete diversity between plaintiff and defendant and because the amount in controversy exceeds \$75,000, exclusive of interest, costs, and fees. In support of this Notice, Turrell states as follows:

**I. BACKGROUND**

1. On July 19, 2007, plaintiff filed the Complaint in this action against defendant in the Supreme Court of the State of New York, County of New York.
2. On July 19, 2007, defendant by counsel accepted service of the Complaint. No further proceedings have taken place in the state court as of the date of the filing of this Notice of

Removal.

3. Plaintiff purports to assert claims for breach of contract and "Specific Performance" based upon Turrell's purported failure to create works of art for plaintiff to sell and Turrell's purported failure to pay plaintiff commissions on sales of Turrell's art work. (Complaint ¶ 8.)

4. In connection with its first breach of contract claim, plaintiff alleges \$1,400,000 in damages, exclusive of interest, costs and fees. (Complaint ¶ 30.) In connection with its claim for "Specific Performance" plaintiff requests that the Court order Turrell to produce and deliver three works of art. (Complaint ¶ 35.) In connection with its second breach of contract claim, plaintiff alleges \$626,250 in damages, exclusive of interest, costs and fees. (Complaint ¶ 41).

## **II. THIS NOTICE OF REMOVAL IS TIMELY AND PROPERLY FILED**

5. This lawsuit is a civil action within the meaning of the Acts of Congress relating to the removal of actions.

6. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b) because it is filed within thirty (30) days of July 19, the date upon which defendant received service of the Summons and Complaint in this action.

7. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the Supreme Court of the State of New York, County of New York and written notice of removal is being provided to all adverse parties.

8. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process and pleadings served on James Turrell are attached hereto as Exhibit A and are incorporated by reference.

**III. THERE IS COMPLETE DIVERSITY OF CITIZENSHIP BETWEEN THE PARTIES**

9. According to the allegations of the Complaint in this action and public records, and pursuant to 28 U.S.C. § 1332(c)(1) plaintiff Michael Hue-Williams Ltd. d/b/a Albion Gallery is a citizen of England because it is a limited liability company organized under the laws of England with its principal place of business at 8 Hester Road, Battersea, London, England, SW11 4AX. (Complaint ¶ 1.)

10. Defendant James Turrell is a citizen of the state of Arizona and resides at 9000 Hutton Ranch Road, Flagstaff, Arizona 86004.

11. The diversity of citizenship requirement of 28 U.S.C. § 1332(a)(2) is satisfied because this suit is between a citizen of a state and a citizen of a foreign state.

**IV. THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000.**

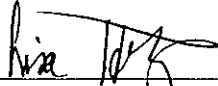
12. The amount in controversy exceeds \$75,000 because plaintiff is claiming damages of \$2,026,250, exclusive of interest, costs and fees. (Complaint ¶¶ 30, 35, 41.)

13. Accordingly, the requisite amount in controversy for federal diversity jurisdiction under 28 U.S.C. §§ 1332(a) is satisfied.

WHEREFORE, James Turrell notices the removal of the above-entitled action from the Supreme Court of the State of New York, County of New York, to this Court.

Respectfully submitted

Dated: August 17, 2007



\_\_\_\_\_  
Gregory A. Clarick  
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*Attorneys for Defendant James Turrell*

80400784.1

## **EXHIBIT A**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
MICHAEL HUE-WILLIAMS LTD. d/b/a  
ALBION GALLERY,

Plaintiff,

-against-

JAMES TURRELL,

Defendant.  
-----X

Index No.: 07/602411

Date Purchased:

Plaintiff designates New York County as  
the place of trial.

The basis of the venue is NYCPLR §  
503(a), neither of the parties residing in  
New York State.

SUMMONS

To the above named Defendant:

YOU ARE HEREBY SUMMONED to answer the verified complaint in this action and to serve a copy of your verified answer on the Plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the verified complaint.

Dated: July 18, 2007

McLaughlin & Stern, LLP

By: 

PETER R. STERN

Attorneys for Plaintiff

Michael Hue-Williams, Ltd. d/b/a

Albion Gallery

260 Madison Avenue

New York, New York 10016

**DEFENDANTS' ADDRESS:**

9000 Hutton Ranch Road  
Flagstaff, Arizona 86004

NEW YORK  
COUNTY CLERK'S OFFICE

JUL 19 2007

NOT COMPARED  
WITH COPY FILE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

MICHAEL HUE-WILLIAMS, LTD. d/b/a  
ALBION GALLERY

Index No. /2007

**COMPLAINT**

-against-

JAMES TURRELL,

Defendant.

-----X

Plaintiff Michael Hue-Williams, Ltd. d/b/a Albion Gallery ("Albion" or "Plaintiff")  
by its attorneys, McLaughlin & Stern, LLP, as and for its Complaint against James Turrell ("Turrell"  
or "Defendant"), alleges the following:

**THE PARTIES**

1. Plaintiff Albion is an art gallery. Plaintiff is organized under the laws of England and maintains its principal place of business in London, England.
2. Defendant Turrell is a world-famous artist.

**VENUE AND JURISDICTION**

3. This Court has subject matter jurisdiction pursuant to NYCPLR §302(1) as Defendant regularly transacts business within the state and contracts to supply goods in the state.
4. Venue lies in the County of New York pursuant to NYCPLR §503(a).

**NATURE OF THE CLAIMS**

5. For many years, Albion was a dealer for works created by Turrell. During the course of this relationship, Albion sold numerous Turrell works. During the course of the relationship, Albion sold Turrell works for sums in excess of \$10,000,000. During the course of the relationship, Albion organized and held in excess of eight exhibitions of works by Turrell.

6. During the course of the relationship, Albion and Turrell conducted business on the basis of a 50/50 split of the retail price of an object, generally exclusive of production costs.

7. In or about February 2007, Turrell notified Albion that he wished to terminate Albion's agency to sell Turrell works.

8. This action relates to the following: (1) Turrell's failure to create works that had been sold by Albion to a number of its most important clients; and (2) Turrell's failure to pay Albion commissions due to it with respect to transactions where Turrell has received payment from the purchasers directly.

**FIRST CAUSE OF ACTION**  
**(BREACH OF CONTRACT)**

9. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 8 inclusive with the same force and effect as though more fully set forth herein again at length.

10. In or about early 2005, Turrell embarked upon a series of works entitled the "Tall Glass" works.

11. The Tall Glass works utilize a computer-controlled color array contained within a

wall aperture to generate a light field defined by the transformation of color.

12. Turrell and Albion agreed that there would be 10 Tall Glass works in the edition.

13. As part of the edition, a prototype was produced. Albion paid for the costs of the prototype. By advancing the costs of the prototype, it was understood and agreed that Albion would have the right to sell all 10 Tall Glass works. It was further agreed that Turrell would reimburse Albion for the costs of the prototype. The costs of the prototype were in excess of \$100,000.

14. Between February 2005 and November 2006, Albion proceeded to sell nine of the ten works in the series, representing total sales in excess of \$3,300,000, exclusive of manufacturing costs.

15. On or about January 24, 2006, Albion sold one of the Tall Glass works to Louise MacBain. Ms. MacBain is the owner of a number of art-related publications and the founder of a museum in London. Turrell produced and delivered the work.

16. In or about August 2006, Ms. MacBain paid for her Tall Glass work. Turrell and Albion shared the purchase price (exclusive of production costs).

#### **Commissions at Risk on Transactions**

17. On or about February 14, 2005, nearly a year prior to the sale to Ms. MacBain, Albion sold a Tall Glass work to Dr. Wayne Burt. To date, Turrell has refused to produce or deliver the work. If Albion is forced to cancel the transaction, Albion will be deprived of a commission of \$150,000.

18. On or about February 22, 2005, approximately eleven months prior to the sale to Ms.

MacBain, Albion sold a Tall Glass work to Steve Gottlieb. To date, Turrell has refused to produce or deliver the work. If Albion is forced to cancel the transaction, Albion will be deprived of a commission of \$200,000.

19. On or about January 27, 2006, contemporaneous with the sale to Ms. MacBain, Albion sold a Tall Glass work to Mark Booth. To date, Turrell has refused to produce or deliver the work. If Albion is forced to cancel the transaction, Albion will be deprived of a commission of \$169,600.

#### **Lost Commissions**

20. On or about May 31, 2005, approximately eight months prior to the sale to Ms. MacBain, Albion sold a Tall Glass work to Vernon Faulconer. Turrell refused to produce or deliver the work. As a consequence of Turrell's actions, Mr. Faulconer demanded that Albion cancel the transaction. As a consequence, Albion has lost a commission of \$150,000.

21. On or about July 26, 2005, approximately six months prior to the sale to Ms. MacBain, Albion sold a Tall Glass work to Ramy Goldstein. Turrell refused to produce or deliver the work. As a consequence of Turrell's actions, Mr. Goldstein demanded that Albion cancel the transaction. As a consequence, Albion has lost a commission of \$150,000.

22. On or about September 7, 2005, approximately five months prior to the sale to Ms. MacBain, Albion sold a Tall Glass Work to Israel Englander. Turrell refused to produce or deliver the work. As a consequence of Turrell's actions, Mr. Englander demanded that Albion cancel the transaction. As a consequence, Albion has lost a commission of \$150,000.

23. On or about July 11, 2006, Albion sold a Tall Glass Work to Menachem Sternberg. Turrell refused to produce or deliver the work. As a consequence of Turrell's actions, Mr. Sternberg demanded that Albion cancel the transaction. As a consequence, Albion has lost a commission of \$300,000.

24. On or about November 1, 2006, Albion sold a Tall Glass work to Angus Aynsley. Turrell refused to produce or deliver the work. As a consequence of Turrell's actions, Mr. Aynsley demanded that Albion cancel the transaction. As a consequence, Albion has lost a commission of \$250,000.

25. By his actions, Turrell has deprived Albion of the opportunity to sell the tenth Glass Work. As a consequence, Albion has lost a commission of at least \$300,000.

26. In completing the MacBain sale, but refusing to perform five sales (Burt, Gottlieb, Faulconer, Goldstein and Englander) that pre-dated the MacBain sale on or about January 24, 2006, one sale that was contemporaneous with the MacBain sale (Booth) and an additional two sales (Booth and Sternberg) that pre-dated Ms. MacBain's payment for her purchase in or about August 2006, Turrell has acted willfully and wantonly.

27. Messrs. Burt, Gottlieb, Faulconer, Goldstein, Englander, Booth, Sternberg and Aynsley are important collectors of art and important Albion clients.

28. Upon information and belief, Turrell was well aware of the importance of Messrs. Burt, Gottlieb, Faulconer, Goldstein, Englander, Booth, Sternberg and Aynsley as collectors and as clients of Albion.

29. Turrell's refusal to perform eight of the nine Tall Glass sales was maliciously intended to harm Albion and Albion's relationship with many of its important clients.

30. As a consequence of Turrell's breaches of contract in failing to consummate the sales and failing to repay Albion for the prototype, Albion has incurred damages of no less than \$1,400,000.

31. As a consequence of Turrell's refusal to perform his contractual obligations, Albion will incur direct monetary damages of an additional \$519,600 if the Booth, Burt and Gottlieb sales are rescinded.

**SECOND CAUSE OF ACTION  
(SPECIFIC PERFORMANCE)**

32. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 31 inclusive with the same force and effect as though more fully set forth herein again at length.

33. The Tall Glass works are unique and irreplaceable.

34. If Turrell is permitted to continue to breach the agreement between the Parties, Albion's relationship with Booth, Burt and Gottlieb will be seriously damaged.

35. Albion requests that this Court order Turrell to produce and deliver the Tall Glass works for Messrs. Booth, Burt and Gottlieb.

**THIRD CAUSE OF ACTION  
(BREACH OF CONTRACT)**

36. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 35 inclusive with the same force and effect as though more fully set forth herein again at length.

37. During the course of Albion's relationship with Turrell, Albion caused a number of clients to purchase works by Turrell.

38. In many cases, Turrell demanded that payment for the works be made to him directly.

39. Despite having received payment, Turrell has refused to pay Albion the commissions due to it for certain sales. Those sales include sales to Bowater House (\$150,000), the Salzburg Foundation (\$70,000), the Yorkshire Sculpture Park (\$106,250), Harry Handelsman (\$100,000), Axel Stawski (\$75,000), Alexander De Brye (\$25,000), Augustin Copel Luken (\$50,000) and Norman Stone (\$50,000).

40. Upon information and belief, Turrell has failed to pay commissions on other transactions for which he has received payment in whole or in part.

41. As a consequence of the foregoing, Albion has been damaged in an amount no less than \$626,250.

#### **RELIEF REQUESTED**

WHEREFORE, Plaintiff Albion Gallery respectfully requests that judgment be entered against Defendant James Turrell, as follows:

(A) With respect to the First Cause of Action, an award of damages of no less than

\$1,400,000;

(B) With respect to the Second Cause of Action, by an order requiring Turrell to produce and deliver the Tall Glass works for Messrs. Booth, Burt and Gottlieb;

(C) With respect to the Third Cause of Action, an award of damages of no less than \$626,250; and

(D) Awarding Plaintiff interest and costs, and such other relief as the Court may deem just, proper and equitable.

Dated: New York, New York  
July 18, 2007

McLAUGHLIN & STERN, LLP

By   
PETER R. STERN

Attorneys for Plaintiff  
Michael Hue-Williams, Ltd. d/b/a  
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